

CID 244

Rec'd PCT/PTO 07 MAR 2005

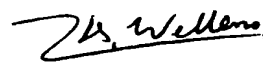
PATENT COOPERATION TREATY  
**PCT**  
INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

**10/526967**

Applicant's or agent's file reference 501763/WTM	<b>FOR FURTHER ACTION</b>	See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416).
International Application No. <b>PCT/AU2003/001165</b>	International Filing Date (day/month/year) 5 September 2003	Priority Date (day/month/year) 6 September 2002
International Patent Classification (IPC) or national classification and IPC Int. Cl. <sup>7</sup> H01M 6/06, 6/12		
Applicant COCHLEAR LIMITED et al		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 3 sheets, including this cover sheet. <input type="checkbox"/> This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT). These annexes consist of a total of sheet(s).
3. This report contains indications relating to the following items:  I <input checked="" type="checkbox"/> Basis of the report II <input type="checkbox"/> Priority III <input type="checkbox"/> Non-establishment of opinion with regard to novelty, inventive step and industrial applicability IV <input type="checkbox"/> Lack of unity of invention V <input checked="" type="checkbox"/> Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement VI <input type="checkbox"/> Certain documents cited VII <input type="checkbox"/> Certain defects in the international application VIII <input type="checkbox"/> Certain observations on the international application

Date of submission of the demand 10 October 2003	Date of completion of the report 5 January 2005
Name and mailing address of the IPEA/AU AUSTRALIAN PATENT OFFICE PO BOX 200, WODEN ACT 2606, AUSTRALIA E-mail address: pct@ipaustalia.gov.au Facsimile No. (02) 6285 3929	Authorized Officer  <b>MR KIM WELLENS</b> Telephone No. (02) 6283 2162

**I. Basis of the report****1. With regard to the elements of the international application:\***

- ☒ the international application as originally filed.
- ☐ the description, pages , as originally filed,  
pages , filed with the demand,  
pages , received on with the letter of
- ☐ the claims, pages , as originally filed,  
pages , as amended (together with any statement) under Article 19,  
pages , filed with the demand,  
pages , received on with the letter of
- ☐ the drawings, pages , as originally filed,  
pages , filed with the demand,  
pages , received on with the letter of
- ☐ the sequence listing part of the description:  
pages , as originally filed  
pages , filed with the demand  
pages , received on with the letter of

**2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.**

These elements were available or furnished to this Authority in the following language which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

**3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:**

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished

**4. ☐ The amendments have resulted in the cancellation of:**

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/fig.

**5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).\*\***

\* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17).

\*\* Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims	YES
	Claims 1- 52	NO
Inventive step (IS)	Claims	YES
	Claims 1- 52	NO
Industrial applicability (IA)	Claims 1- 52	YES
	Claims	NO

2. Citations and explanations (Rule 70.7)

D1- US 2001/0009735 A1 (Yang et al.), 26 July 2001

D2- WO 2001/091224 A1 (Eveready Battery Company Inc.), 29 November 2001

D3- US 6248476 B1 (Sun et al.), 19 July 2001

Novelty (N) and Inventive Step (IS) claims 1- 52

Document D1 discloses a zinc air battery, wherein there are two cathodes, with one cathode located proximal to the anode. Hence all of the essential features of claims 1- 52 are disclosed. Consequently claims 1- 52 are not novel and do not involve an inventive step.

Inventive Step (IS) claims 1- 52

Although the claims place no limitation on the type of cell nor its size, it is acknowledged that D1 is directed at large batteries suitable for electric vehicles, whilst the current application is directed at miniaturised batteries suited to cochlear implants. Notwithstanding the fact that the claims are not limited to such a miniaturised battery, it would still be considered obvious to combine the teachings from D1 with D2 and/ or D3 to overcome the alleged problems as disclosed in the current specification. In particular D2 and D3 disclose the type of miniaturised battery of the zinc air type, whilst D1 discloses all of the essential features of the claimed battery as already indicated above.

# PATENT COOPERATION TREATY

C10 244.

From the:  
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

## PCT

**WRITTEN OPINION**  
(PCT Rule 66)

<b>To:</b>  F.B. Rice & Co. 139 Rathdowne Street CARLTON VIC 3053 <div style="text-align: right; margin-top: 10px;">05 NOV 2003</div>		<b>Date of mailing</b> (day/month/year) <span style="float: right;">03 NOV 2003</span>	
<b>Applicant's or agent's file reference</b> 501763/WTM ✓		<b>REPLY DUE</b> within <b>TWO MONTHS</b> from the above date of mailing	
<b>International Application No.</b> PCT/AU03/01165 ✓	<b>International Filing Date (day/month/year)</b> 5 September 2003	<b>Priority Date (day/month/year)</b> 6 September 2002 ✓	
<b>International Patent Classification (IPC) or both national classification and IPC</b> Int. Cl. <sup>7</sup> H01M 6/06, 6/12			
<b>Applicant</b> <div style="text-align: center;">COCHLEAR LIMITED et al ✓</div>			

1. This written opinion is the **first** drawn by this International Preliminary Examining Authority.
2. This opinion contains indications relating to the following items:
 

I	<input checked="" type="checkbox"/>	Basis of the opinion
II	<input type="checkbox"/>	Priority
III	<input type="checkbox"/>	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
IV	<input type="checkbox"/>	Lack of unity of invention
V	<input checked="" type="checkbox"/>	Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
VI	<input type="checkbox"/>	Certain documents cited
VII	<input type="checkbox"/>	Certain defects in the international application
VIII	<input type="checkbox"/>	Certain observations on the international application
3. The **FINAL DATE** by which the international preliminary examination report must be established according to Rule 69.2 is:  
6 January 2005
4. The applicant is hereby **invited to reply** to this opinion.
 

**When?** See the **Reply Due** date indicated above. However, the Australian Patent Office will not establish the Report before the earlier of (i) a response being filed, or (ii) one month before the **Final Date** by which the international preliminary examination report must be established. The Report will take into account any response (including amendments) filed before the Report is established. **If no response is filed by 1 month before the Final Date**, the international preliminary examination report will be established on the basis of this opinion.

Applicants wishing to have the benefit of a further opinion (if needed) before the report is established should ensure that a response is filed at least **3 months before the Final Date** by which the international preliminary examination report must be established.

**How?** By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

**Also** For an additional opportunity to submit amendments, see Rule 66.4. For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4bis. For an informal communication with the examiner, see Rule 66.6.

Name and mailing address of the IPEA/AU AUSTRALIAN PATENT OFFICE PO BOX 200, WODEN ACT 2606, AUSTRALIA E-mail address: pct@ipaustalia.gov.au Facsimile No. (02) 6285 3929	<b>Authorized Officer</b> <div style="text-align: center; margin-top: 10px;">   <b>MR KIM WELLENS</b>          Telephone No. (02) 6283 2162       </div>
---	---

**I. Basis of the opinion**

1. With regard to the elements of the international application:\*

- ☒ the international application as originally filed.
- ☐ the description, pages , as originally filed,  
pages , filed with the demand,  
pages , received on with the letter of
- ☐ the claims, pages , as originally filed,  
pages , as amended under Article 19,  
pages , filed with the demand,  
pages , received on with the letter of
- ☐ the drawings, pages , as originally filed,  
pages , filed with the demand,  
pages , received on with the letter of
- ☐ the sequence listing part of the description:  
pages , as originally filed  
pages , filed with the demand  
pages , received on with the letter of

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the written opinion was drawn on the basis of the sequence listing:

- ☐ contained in the international application in printed form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/fig.

5. ☐ This opinion has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

\* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed"

**V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

**1. Statement**

Novelty (N)	Claims	YES
	Claims 1- 52	NO
Inventive step (IS)	Claims	YES
	Claims 1- 52	NO
Industrial applicability (IA)	Claims 1- 52	YES
	Claims	NO

**2. Citations and explanations**

D1- US 2001/0009735 A1 (Yang et al.), 26 July 2001

D2- WO 01/91224 A1 (Eveready Battery Company Inc.), 29 November 2001

D3- US 6248476 B1 (Sun et al.), 19 July 2001

Novelty (N) and Inventive Step (IS) claims 1- 52

Document D1 discloses a zinc air battery, wherein there are two cathodes, with one cathode located proximal to the anode. Hence all of the essential features of claims 1- 52 are disclosed. Consequently claims 1- 52 are not novel and do not involve an inventive step.

Inventive Step (IS) claims 1- 52

Although the claims place no limitation on the type of cell nor its size, it is acknowledged that D1 is directed at large batteries suitable for electric vehicles, whilst the current application is directed at miniaturised batteries suited to cochlear implants. Notwithstanding the fact that the claims are not limited to such a miniaturised battery, it would still be considered obvious to combine the teachings from D1 with D2 and/ or D3 to overcome the alleged problems as disclosed in the current specification. In particular D2 and D3 disclose the type of miniaturised battery of the zinc air type, whilst D1 discloses all of the essential features of the claimed battery as already indicated above.